



P.I. Samba & Company Advocates v Bunoil Limited (Environment and Land Miscellaneous Application E090 of 2021) [2023] KEELC 16360 (KLR) (23 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16360 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E090 OF 2021
AA OMOLLO, J
MARCH 23, 2023**

BETWEEN

P.I. SAMBA & COMPANY ADVOCATES ADVOCATE

AND

BUNOIL LIMITED DEFENDANT

RULING

1. The advocate/applicant has moved this court vide the Notice of Motion dated July 25, 2022 brought under the provisions of Section 5(2) of Advocates Act, paragraph 7 of the Advocates Remuneration Order and order 51 of the Civil Procedure Rules 2010. The orders sought are:
 - a) Judgment be entered for PI Samba & Company Advocates in terms of the Certificate of Taxation dated July 21, 2022.
 - b) Interest at the rate of 14% be deemed to have accrued from the date of service of the Bill of Costs until payment in full.
 - c) Costs of the Application.
2. The application is premised on the applicant's affidavit and the following grounds;
 - a) The Bill of Costs dated 28th April, 2021 was served on May 10, 2021 and a Notice of Taxation dated September 29, 2021 served on the same date of September 29, 2021.
 - b) The Honourable Court delivered its Ruling inter partes on the Applicant's Bill of Costs on May 10, 2022 taxing the same at Kshs 1,444,664.2/-. A certificate of Taxation dated July 21, 2022 issued thereafter.



- c) The Respondent has not been moved in any manner or at all to effect the payments adjudged by the Taxing Master.
 - d) That it is only just and fair that the Applicant be allowed to take proceedings to prepare for execution for the taxed costs and interests in the terms of the orders sought.
3. The Respondent/client filed a replying affidavit sworn on January 31, 2023. He deposed that over the last two years, the Applicant has either extracted or is in the process of extracting certificates of taxation several matters including the following;
 - a) High Court ELC Misc Appl Number E053 of 2021 PI Simba & Company Advocates Vs Linear Credit Limited.
 - b) High Court ELC Misc App number E090 of 2021 PI Samba & Company Advocates v Bunoil Limited.
 - c) ELC Misc E085 of 2021 PI Samba and Company Advocates v Buzeki Enterprises Limited.
 - d) High Court ELC Misc App Number E041 of 2021 PI Samba & Company Advocates v Buzeki Enterprises Limited.
4. That the total sum payable to the Applicant from taxed costs is close to Kshs 90,000,000 which amount the Respondent cannot muster to pay in lump sum. He urged that he be allowed to liquidate the judgment sum awarded if any in reasonable monthly instalments to be paid from the date of the order until final settlement. He also prayed that this court does restrain the plaintiffs from levying execution as long as the Applicant pays the proposed monthly instalments. The Respondent concluded that in the alternative, the court does exercise her discretion and order the matter be set down for mediation.
5. From the contents of the affidavit filed in reply to the application, the Respondent has not contested the orders sort except for making a prayer to settle the decretal sum in monthly instalments. Unfortunately, the Respondent did not make any proposals on the monthly instalments he intends to make towards settling the amounts due. Secondly, the decrees listed are obtained in independent files so there is no way an order can be made in this file to affect them unless such an order is made by consent of the parties.
6. Section 51(2) of the *Advocates Act* Provides that;

“The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”
7. The section upon which the judgement is sort allows for the taxed costs to be converted into a judgement of the court. In this case, the grant of these orders have not been contested. The Respondent is at liberty to file the necessary application for stay of execution and or payment by instalments. For now, the request made for conversion of the taxed costs in the sum of Kshs 1,444,664.20 into a judgement is allowed as prayed together with interests at court rates from the date of service of the Bill of costs until payment is made in full. Since the application was not opposed, I award the applicant half costs of the application.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF MARCH, 2023

A. OMOLLO

JUDGE

In the presence

Zul Mohammed for Applicant

Mrs Eunice Akello

